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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/822,642

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Craig R. Horne

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62274 7590 01/29/2009

DARDI & ASSOCIATES, PLLC

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MINNEAPOLIS, MN 55402

EXAMINER

HOFFMANN, JOHN M

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* CRAIG HORNE, JESSE JUR, RONALD MOSSO,  
ERIC EUVRARD and XIANGXIN BI

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Application No. 10/822,642  
Technology Center 1700

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Mailed: January 29, 2009

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Before TOI JOHNSON *Review Paralegal*  
JOHNSON, *Review Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 10, 2008. A review of the application revealed that it is not ready for docketing as an appeal.

Application No. 10/822,642

Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER

GROUND OF REJECTION TO BE REVIEWED UPON APPEAL

A review of the file finds that the grounds of rejection to be reviewed on appeal of the claims as provided in the Examiner's Answer mailed September 17, 2008 under the heading "Grounds of rejection to be Reviewed on Appeal" is not consistent with the grounds of rejection of claims set forth in the Final Rejection of record mailed February 5, 2008. The grounds of rejection to be reviewed on appeal as provided in the Examiner's Answer must be consistent with the last Office action of record. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 (8<sup>th</sup> ed. Rev. 6, Sept 2007) for details.

Specifically, the Examiner's Answer does not set forth a rejection for claim 48; whereas the Final Rejection finds that claim 48 is rejected under 35 U.S.C. §103(a) as being unpatentable over Hicks 4749396 in view of Miller 4501602, Berkey 4684384, Kobayashi 3957474 and Bi 5958348 as set forth on pages 2 and 4 of the Final Rejection.

Clarification of the record is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Examiner's Answer mailed September 17, 2008;
- 2) issue a revised Examiner's Answer clarifying the rejection for claim 48 and to correct other sections of the Answer as may be required (if appropriate); or
- 3) issue a form PTOL-90 clarifying the status of claim 48; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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